
UTAH LABOR COMMISSION

ROBERT J. ACKERMAN,

Petitioner,

vs.

**AMI ROOFING and WORKERS
COMPENSATION FUND,**

Respondents.

ORDER OF REMAND

Case No. 07-0498

AMI Roofing and its insurer Workers Compensation Fund (hereafter referred to jointly as “AMI”) ask the Utah Labor Commission to review Administrative Law Judge Holley’s award of benefits to Robert J. Ackerman under the Utah Workers’ Compensation Act, Title 34A, Chapter 2, Utah Code Annotated.

The Labor Commission exercises jurisdiction over this motion for review pursuant to Utah Code Annotated § 63-46b-12 and Utah Code Annotated § 34A-2-801(3).

BACKGROUND AND ISSUE PRESENTED

Mr. Ackerman claims workers’ compensation benefits for injuries suffered while working for AMI on January 5, 2005. Following an evidentiary hearing, Judge Holley awarded benefits to Mr. Ackerman, including permanent total disability benefits of \$442 per week.

In requesting review of Judge Holley’s decision, AMI raises only one issue—whether the weekly rate of permanent total disability compensation is supported by the evidence.

DISCUSSION

Mr. Ackerman began working as a roofer for AMI on October 2, 2006. On January 5, 2007, he was transporting roofing supplies to an AMI job site when his truck slid off a snow covered road. He suffered a spinal cord injury, resulting in paraplegia and leaving him permanently and totally disabled. There is no question that Mr. Ackerman is entitled to permanent total disability compensation. However, the parties disagree as to the proper weekly amount of that compensation.

Section 34A-2-413(2) of the Utah Workers’ Compensation Act requires AMI to pay disability compensation to Mr. Ackerman in an amount equal to two-thirds of his “average weekly wage” at the time of his injury, plus an allowance for dependents and subject to certain maximum and minimum limits. Consequently, a correct determination of Mr. Ackerman’s average weekly wage is essential in computing the amount of his disability compensation.

ORDER OF REMAND
ROBERT J. ACKERMAN
PAGE 2 OF 2

The evidence submitted by the parties regarding Mr. Ackerman's earnings at AMI is confusing and incomplete. Copies of paychecks submitted by AMI contain obviously inaccurate information regarding hours worked and rate of pay. For his part, Mr. Ackerman asserted that he received additional cash payments from AMI, but it remains unclear whether these alleged cash payments were reimbursement for expenses or additional compensation, or how AMI accounted for the payments for tax purposes. There was also testimony that AMI photocopied Mr. Ackerman's work logs, but no follow-up inquiry as to the location of those photocopies.

The foregoing questions are not a complete list of omissions and inconsistencies regarding Mr. Ackerman's earnings at AMI. Given the state of the existing evidentiary record, it is impossible to make a reasoned judgment as to the proper amount of Mr. Ackerman's weekly total disability compensation. The Commission therefore remands this matter to Judge Holley to obtain the evidence required under § 34A-2-409 of the Utah Workers' Compensation Act for determining Mr. Ackerman's average weekly wage. Judge Holley will then issue a new decision setting forth her findings and explaining her application of § 34A-2-409's alternative computation methods to those facts. Any party dissatisfied by Judge Holley's decision may then request review by the Labor Commission or its Appeals Board.

ORDER

The Commission remands this matter to Judge Holley for additional proceedings and decision consistent with this decision. It is so ordered.

Dated this 25th day of March, 2008.

Sherrie Hayashi
Utah Labor Commission